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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 THOMAS ERIC CONMY,

8 Movant,

9 v.

10 UNITED STATES OF AMERICA,

11 Respondant

Case No. 2:05-CR-83-KJD-GWF

**ORDER**

12 Before the Court are Thomas Conmy's ("Movant") motions for Certificate of  
13 Appealability (#121), for Clarification Due to Clerical Error Relating to #121 (#124), and to  
14 Preserve Holdings (#125). No responses have been made, and the latest time to respond expired  
15 in mid-February.

16 I. Motion for Clarification (#124)

17 Movant asserts that he mistakenly filed his Motion for a Certificate of Appealability with  
18 the wrong case number, and petitions the Court to consider it in the present case. While Movant  
19 did make some clerical errors, the present case number was included in the motion and the  
20 motion was properly filed by the clerk in this case. Accordingly, Movant's Motion for  
21 Clarification Due to Clerical Error Relating to #121 (#124) is **HEREBY GRANTED**, and the  
22 Court will consider the motion for Certificate of Appealability in this Order.

23 II. Motion for Certification of Appealability (#121)

24 A Certificate of Appealability "may issue . . . only if the applicant has made a substantial  
25 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This showing requires  
26 that Movant "demonstrate that the issues are debatable among jurists of reason; that a court could

1 resolve the issues in a different manner; or that the questions are adequate to deserve  
2 encouragement to proceed further.” Lambright v. Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000)  
3 (internal alterations and emphasis omitted).

4 For the reasons provided by this Court in its prior order (#114), Movant cannot meet this  
5 standard. Further, as noted by the Ninth Circuit, any further appeal is time-barred (#127).  
6 Accordingly, Movant’s Motion for Certificate of Appealability is **HEREBY DENIED**.

7 III. Motion to Preserve Holdings (#125)

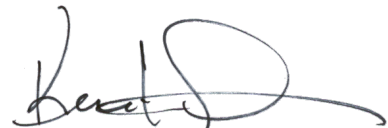
8 Movant petitions the Court to take notice of the Supreme Court decision Alleyne v.  
9 United States, 133 S. Ct. 2151 (2013). However, Movant’s petition is moot. Movant correctly  
10 does not assert that Alleyne applies retroactively, foreclosing further relief under 18 U.S.C. §  
11 2255. Further, this Court would lack the authority to provide relief even if Alleyne did apply  
12 retroactively. “A second or successive motion must be certified as provided in section 2244 by a  
13 panel of the appropriate court of appeals . . . .” 28 U.S.C. § 2255(h).

14 IV. Conclusion

15 Accordingly, and for the above reasons, Movant’s Motion for Certificate of Appealability  
16 (#121) is **HEREBY DENIED**; Movant’s Motion to Preserve Holdings (#125) is also **DENIED**  
17 **as MOOT**.

18 Movant’s Motion for Clarification (#124) is **HEREBY GRANTED**.

19  
20 DATED this 24th day of April 2014.

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23 Kent J. Dawson  
24 United States District Judge  
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